

REMARKS/ARGUMENTS

Status of the Claims

Before this Amendment, claims 1-25 were present for examination. Claims 1, 16, and 21 are amended; no claims are added or canceled. Therefore, claims 1-25 are now present for examination, and claims 1, 16, and 21 are the independent claims. No new matter is added, as the amendments are supported by the Specification (Original Application, p. 8, l. 33- p. 9, l. 15).

The Final Office Action dated April 22, 2009 ("Office Action") rejected claims 1-25 under 35 U.S.C. §103(a) as being unpatentable over the cited portions of McDonald, U.S. Patent No. 6,648,222 ("McDonald"), in view of the cited portions of Slater, U.S. Patent No. 6,615,190 ("Slater"), and further view of the cited portions of FoodReview's All Food Stamp Benefits to be Issued Electronically ("FoodReview"). Applicants respectfully request reconsideration for the reasons that follow. A Request for Continued Examination is filed concurrently herewith.

35 U.S.C. §103(a) Rejections, McDonald et al.

The Office Action rejected independent claims 1, 16, and 21 under 35 U.S.C. §103(a) as being unpatentable over McDonald, in view of Slater, and further in view of FoodReview. Applicants, however, believe that significant limitations from the amended independent claims are not taught or suggested by the cited references.

Specifically, neither McDonald, Slater, or FoodReview can be relied upon to teach or suggest receiving, at a vending machine, an input from a patron to change the benefit type from a first benefit type to a second benefit type or reconfiguring the smart card for the second benefit type, as generally set forth in the independent claims.

In McDonald, funds are immediately transferred from the cardholder to the vendor in "real-time" (McDonald, Abstract, col. 21, ll. 28-34). Thus, it appears that the system of McDonald would not be able to simply transfer funds from one vendor to the next, as once transferred the funds are no longer under the system's control. For example, McDonald states

that since “the system of the present invention never handles or takes title to the customer’s funds, it is impossible for the system itself to refund money to a customer who has canceled or suspended his account. Refund activities, if set up at all, would be handled directly between the customer seeking the refund and either a merchant or the appropriate vendor.” (McDonald, col. 21, ll. 61-67).

The claimed transfer between benefit types also appears to be counter to certain characteristics of the system of McDonald. For example, the reference describes an example where an airline company can provide an incentive or cost discount at a merchant terminal where more than one dollar of airline travel could be transferred to the subaccount in exchange for one dollar of actual charge “based on the fact that the airline immediately receives possession of the customer’s funds even though those funds cannot be spent until a ticket has been used for air travel.” (McDonald, col. 19, l. 56-63). If, for example, the airline provided the customer with a \$100 credit while the customer only paid \$75 as part of its incentive, the airline would likely not want to transfer the \$100 credit to another company, as it would be losing money. In McDonald, because funds are in the control of the vendors, the transfers would be against their interest in many cases. Even requesting a refund is disclosed as requiring direct interaction with the vendors.

Slater discloses a card “to replace the need to issue checks.” (Slater, col. 1, l. 37-38). The reference describes an inexpensive system for distributing a single value type, where the cardholder’s control of the account on the card is limited. The cardholder is even prohibited from depositing funds into the account. (Slater, col. 1, l. 55-57). Thus, given the limited user control of the system, there is no suggestion that the patron be able to change benefit types in the card system disclosed in Slater.

Finally, FoodReview does not disclose a card with a number of benefit types. Instead, the reference states that “food stamp benefits, whether delivered as coupons or through an EBT system, must be spent on authorized food items.” (FoodReview, p. 3, bottom paragraph). Further, the reference concentrates on the costs of the system. (See FoodReview, p. 2, para. 6, stating: “electronic food stamps lower the recipients’ cost to participate in the program”).

Finally, allowing such changes would detract from the purpose of the program of specifically targeting food expenditures. (See FoodReview, p. 4, para. 4, last sentence).

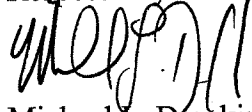
Because the combined references do not teach all of the limitations of the independent claims and the references further provide reasons not to modify the disclosures to cover such limitations, Applicants respectfully request that the §103(a) rejections to these claims and the claims dependent thereon be withdrawn.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



Michael L. Drapkin
Reg. No. 55,127

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
Attachments
MLD:sk
61931603 v1